IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION (MAIN) NO. 388 OF 2006

Shri Julio alias Francis K. Bugde,
Age 21 years, bachelor,
R/o. H. No. 182, Duler,
Mapusa, Bardez, Goa.. ..... Petitioner

V e r s u s

1. S t a t e

2. Mr. Magno Socorro Pereira,
major, businessman,
H. No. 70, Feira Alta,
Mapusa,
Bardez, Goa.
(All registered addresses) ..... Respondents

Mr. Arun Bras De Sa, Advocate for the Appellant.
Mr. A. D. Bhobe, Advocate for Respondent no.2.

CORAM: N. A. BRITTO, J.

DATE: 25th January, 2007.

ORAL JUDGMENT

Admit. By consent heard forthwith.

2. The dispute between the petitioner and the respondent is regarding possession of a Matiz car bearing registration no. GA-01-R-5099, which in the records of R.T.O. stands in the name of the petitioner.

3. The said vehicle came to be seized by the police on 15.07.2006

after the petitioner had filed a complaint dated 29.06.2006, which was registered on 15.07.2006 as Crime no.147/06 under Sections 406. 506 (II) and 504 I.P.C. No charge sheet has been filed till date.

4. Both the parties filed applications for the return of the seized vehicle under Section 457 of the Code of Criminal Procedure, 1973 and the learned Magistrate by Order dated 08.08.2006 has held that an inquiry is required to be conducted to find out as to which of them was in lawful possession of the car and it is this Order which is challenged by the petitioner invoking Section 482 of the Code (Code of Criminal Procedure, 1973).

5. The case of the petitioner, as can be seen from the complaint dated 29.06.2006, is that the vehicle was taken by the respondent 15 days prior to that date for personal work as some relatives of the respondent were to come, with a promise to return the car in the evening on the same date but the respondent failed to return the car as promised and when the petitioner approached the respondent for return of the said car, the respondent promised that he would return the said car after the departure of his relatives but failed to return the same to the petitioner. On or about 27.06.206, when the petitioner went again to see the respondent, the respondent arrogantly told the petitioner that he would not return the vehicle and also threatened the petitioner with dire consequences.

The case set out by the petitioner in his application filed before the trial Court is that the vehicle stands registered in his name on the R.C. book and,

therefore, it has got to be returned to him and that has also been the contention of Shri Bras D' Sa, the learned Counsel on behalf of the petitioner as according to the learned Counsel, since the R.C. book stands in the name of the petitioner, the same prima facie shows that the vehicle belongs to the petitioner and, therefore, the petitioner would be entitled to its interim custody.

6. On the other hand, it is the case of the respondent that he is in possession of the said vehicle from 07.12.2004. As per the respondent, after negotiations, the petitioner agreed to sell the said vehicle for Rs.80,000/- and the said sum has been paid by the respondent to the petitioner by way of two cheques for Rs.30,000/- and Rs.50,000/-, one of which is dated 13.12.2004. It was further the case of the respondent that the petitioner had agreed to execute the transfer form bearing no. 32 by 13.12.2004 but later informed the respondent that he was unable to secure the said form and that he would complete the formalities within six weeks as he was leaving for Bombay. On behalf of the respondent, it is contended that it is not only the vehicle which is in possession of the respondent, but the petitioner had also handed over along with the vehicle the R.C. book which is also in possession of the respondent. Apparently the petitioner did not file any reply to the respondent's application for the release of the vehicle and it appears from the impugned order that the petitioner sought to explain the payment made by the respondent, for the first time, submitting at the time of arguments, that it was made towards the supply of stones by the petitioner to the respondent.

7. On behalf of both the parties, reliance has been placed on several authorities and I have perused them all.

8. First, I would refer to the case of ***Ram Prakash Sharma v. State of Haryana (AIR 1978 S.C. 1282)***, wherein the Hon'ble Supreme Court, speaking through three learned Judges, has stated that the question of release of the property at the stage of 457 of the Code, the Court has to be circumspect before releasing the property. The question of release has to be decided on its own merits in each case and the discretion of the Court has to be exercised after due consideration of the interest of justice including the prospective necessity of the production of the seized articles at the time of the trial. If the release of the property seized will, in any manner, affect or prejudice the Courts of justice at the time of the trial, it will be a wise discretion to reject the claim for return. If the Judge is of the opinion that the property seized is required to be retained with the police or in the Court for future use at the time of the inquiry or trial, the property shall not be released. If, on the other hand, the property is not needed in any manner in the later stages of inquiry or trial, it would be proper for the Court to release the property to the applicant, furnishing adequate security. This Court in the case of ***Jaganath Bapu Shirsat v. State of Maharashtra & anr. (2000 (2) Mh.L.J. 605)*** held, in relation to Section 457 of the Code, that at that stage, the Magistrate is not required to decide the question of title and that the Court is required to consider as to which party has a better right to possess the

property. This principle which can be followed at this stage.

9. In the case of ***Rajendra Prasad v. State of Bihar [(2001) 10 S.C.C. 88]***, relied upon on behalf of the petitioner, the Hon'ble Supreme Court, at the stage of Section 451 of the Code, did not decide the question of title nor the correctness of the rival versions regarding the transactions relating to the vehicle but felt that the vehicle ought not to remain in the compound of the Police Station and exposed to heat and cold because the vehicle was likely to be lost to all in such situation and proceeded to entrust the custody of the said vehicle temporarily to the appellant who was the ostensible name-holder in the registration certificate, on behalf of the Court, till the conclusion of the trial when the trial Court was required to pass an order regarding the disposal of the property.

On behalf of the respondent, reliance has been placed on ***Vassanta Vishwanathan & Ors. v. V. K. Elayalwar & Ors. [(2001) 8 S.C.C. 133]***, in support of the principle that the property in a vehicle is governed by Section 19 of the Sale of Goods Act, 1930, and not in terms of the provisions of Motor Vehicle Act, 1988. The other authorities cited on behalf of the petitioner are reported in ***Gijji v. A. K. Gopinathan (1996 Cr.L.J. 140), M/s. B. C. L. Financial Services Ltd., v. State of Maharashtra & Ors. (1999 Cr.L.J. 2305)*** and ***Neeraj Kumar Agarwal v. State of U.P. (1992 Cr.L.J. 1247)***. In this last mentioned case, a single of Allahabad High Court has said that normally a vehicle shall be released in favour of the registered owner and that a person

alleging transfer of a vehicle in his name is not entitled to release order in his favour merely on that basis in the absence of the registration and the plea of transfer if true, transferee has remedy in Civil Court for compensation. The other authorities cited on behalf of the respondent is a Division Bench decision of this Court reported in ***Kishan Pandurang Kagde v. Baldev Singh Gian Singh & anr. (1977 Mh.L.J. 656)***, wherein the principle that the transfer of ownership is governed by Sale of Goods Act is reiterated further stating that that it takes place from the date of sale and not from the date on which the transferee's name is recorded.

10. Admittedly, the petitioner filed the complaint on 29.06.2006 stating therein that the vehicle was lent to the respondent fifteen days prior to that date. It appears that the respondent was called for inquiry by the Investigation Officer on 05.07.2006 and 06.07.2006, before the said complaint was registered and on the failure of the respondent to report to the Police Station that Crime no. 147/06 under Sections 406, etc., came to be registered on 15.07.2006. The respondent has categorically stated that he is in possession of the vehicle from 07.12.2004 as the vehicle was sold to him by the petitioner and in support thereof, the respondent produced the proof of payment by way of Statement of Bank Account and so also the R.C. book, which was also in his possession. This is against the claim of the petitioner which appears to be rather vague in that the petitioner has made a vague statement that the vehicle was lent to the petitioner fifteen days prior to the date he filed the complaint. It is not

understood as to why the petitioner remained silent for fifteen days, and the investigation officer remained silent thereafter till the crime was registered on 15.07.2006, in case the respondent had committed breach of trust in relation to the said vehicle. The facts stated by the respondent in his application do not appear to have been contested by the petitioner except for the said submission which came about at the time of arguments that the payment was made towards the payment of the supply of the stones. The respondent has also filed a Civil Suit for declaration and consequential reliefs and the same is pending. The facts stated by the Respondent that the vehicle was purchased by him and the Petitioner was paid Rs.80,000/- by two cheques were not controverted by the petitioner, but on the other hand, were substantiated by the Respondent by production of necessary proof in support therefor. Once the facts stated by the Respondent are accepted they show that the Respondent was in lawful possession of the vehicle at the time of its seizure and being so had a better right to possess the same till the rights to the vehicle were decided at the conclusion of the trial. Any further inquiry would only result in wastage of time. The petitioner is not entitled for possession of the vehicle only because it stands in his name on R.C. Book.

11. In view of the above, the impugned Order dated 08.08.2006 is hereby set aside and the learned J.M.F.C. is hereby directed to hand over the interim custody of the vehicle to the respondent (i.e. Respondent no.2) upon execution of a bond in the sum of Rs. 50,000/- with condition to produce the same as and when required by the learned J.M.F.C.

12. Petition disposed of on above terms. Observations made are only for the purpose of disposal of this petition and will not come in the way of the learned J.M.F.C. passing any order as and when the case is filed.

N. A. BRITTO, J.

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